

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**RECEIVED**NOV 14 2007 *aw*

11-14-07

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

United States of America ex rel.

Tony Thomas - B-35507

(Full name and prison number)

(Include name under which convicted)

PETITIONER

vs.

Terry L. McCann(Warden, Superintendent, or authorized
person having custody of petitioner)

RESPONDENT, and

(Fill in the following blank only if judgment
attacked imposes a sentence to commence
in the future)

ATTORNEY GENERAL OF THE STATE OF

Illinois

(State where judgment entered)

CASE NO:

(Supplied by Clerk of this Court)

07CV6443**JUDGE NORGL****MAG. JUDGE SCHENKIER**

Case Number of State Court Conviction:

NO. 01 CR 25695

PETITION FOR WRIT OF HABEAS CORPUS -- PERSON IN STATE CUSTODY

- Name and location of court where conviction entered: Cook county Circuit
Court, Chicago Ill.
- Date of judgment of conviction: Nov. 7, 2002
- Offense(s) of which petitioner was convicted (list all counts with indictment numbers, if known)
1st degree Murder
- Sentence(s) imposed: 75 years
- What was your plea? (Check one)

(A) Not guilty	<input checked="" type="checkbox"/>
(B) Guilty	<input type="checkbox"/>
(C) Nolo contendere	<input type="checkbox"/>

If you pleaded guilty to one count or indictment and not guilty to another count or indictment, give details:

PART I - TRIAL AND DIRECT REVIEW

1. Kind of trial: (Check one): Jury (☒) Judge only ()
2. Did you testify at trial? YES (☒) NO ()
3. Did you appeal from the conviction or the sentence imposed? YES (☒) NO ()

(A) If you appealed, give the

- (1) Name of court: Appellate court of Ill. First Dist.
- (2) Result: Affirmed
- (3) Date of ruling: June 17, 2004
- (4) Issues raised: whether the trial court erred when it did not appoint counsel to represent Mr Thomas at a hearing on his post-trial pro-se motion for a new trial

(B) If you did not appeal, explain briefly why not:

4. Did you appeal, or seek leave to appeal, to the highest state court? YES (☒) NO ()

(A) If yes, give the

- (1) Result: denied - People v. Thomas. No 1-02-3757
- (2) Date of ruling: Nov 29, 04.
- (3) Issues raised: Whether the trial court erred when it did not appoint counsel to represent Mr Thomas at a hearing on his post-trial pro-se motion for new trial

(B) If no, why not:

5. Did you petition the United States Supreme Court for a writ of certiorari? Yes () No (☒)

If yes, give (A) date of petition: _____ (B) date certiorari was denied: _____

(A)

(4). Issues raised.

2. When there was a bona fide doubt of Mr Thomas's Fitness, the trial court erred in proceeding to trial without holding a fitness hearing and without making any determination as to Mr Thomas's Fitness to stand trial.

3. Whether the state proved Mr Thomas guilty beyond a reasonable doubt of the murder of Khatim Shakir where, based on evidence at trial, Mr Thomas could not have committed the murder at the time the state asserted the crime occurred.

4. Whether the state erred in arguing that Mr Thomas lived at 707 W. Waveland, Ave, where this information was obtained in impeachment and the prosecutor argued that it was substantive evidence of Mr Thomas's motive to commit the crime.

5. Whether Mr Thomas was denied his right to a fair trial when the trial court denied in limine to bar any reference to all aliases used by the defendant, and where trial counsel agreed to and the court allowed the admission of Mr Thomas' prior convictions without analyzing whether these convictions had a bearing on Mr Thomas's truthfulness as a witness.
6. Whether 730 ILCS 5/5-8-1(a)(1)(d)iii)(West 2002), which requires the addition of 15, 20, 25 years to natural life to the sentence for First degree murder if a firearm was possessed, discharged, or used to cause death, violates the prohibitions against double enhancement and disproportionate penalties.

PART II - COLLATERAL PROCEEDINGS

1. With respect to this conviction or sentence, have you filed a post-conviction petition in state court?

YES (☒) NO ()

With respect to *each* post-conviction petition give the following information (use additional sheets if necessary):

- A. Name of court: Circuit Court of Cook County
- B. Date of filing: April 27, 05
- C. Issues raised: Actual innocence, in effective counsel, for failure to investigate. failure of counsel to call crucial witness, failure of counsel to investigate Mr Thomas's mental health
- D. Did you receive an evidentiary hearing on your petition? YES () NO (☒)
- E. What was the court's ruling? Petition was favorably
- F. Date of court's ruling: May 4, 05
- G. Did you appeal from the ruling on your petition? YES (☒) NO ()
- H. (a) If yes, (1) what was the result? denied
- (2) date of decision: Feb, 7, 07
- (b) If no, explain briefly why not: _____
- I. Did you appeal, or seek leave to appeal this decision to the highest state court?
- YES (☒) NO ()
- (a) If yes, (1) what was the result? denied
- (2) date of decision: June, 1, 07
- (b) If no, explain briefly why not: _____

2. With respect to this conviction or sentence, have you filed a petition in a state court using any other form of post-conviction procedure, such as *coram nobis* or habeas corpus? YES () NO (✓)

A. If yes, give the following information with respect to each proceeding (use separate sheets if necessary):

1. Nature of proceeding _____
2. Date petition filed _____
3. Ruling on the petition _____
3. Date of ruling _____
4. If you appealed, what was the ruling on appeal? _____
5. Date of ruling on appeal _____
6. If there was a further appeal, what was the ruling? _____
7. Date of ruling on appeal _____

3. With respect to this conviction or sentence, have you filed a previous petition for habeas corpus in federal court? YES () NO (✓)

A. If yes, give name of court, case title and case number: _____

B. Did the court rule on your petition? If so, state

- (1) Ruling: _____
- (2) Date: _____

4. WITH RESPECT TO THIS CONVICTION OR SENTENCE, ARE THERE LEGAL PROCEEDINGS PENDING IN ANY COURT, OTHER THAN THIS PETITION?

YES (✓) NO ()

If yes, explain: Mr Thomas has filed a successive post-conviction in the Circuit of Cook County. That is still pending

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred when it did not appoint counsel to represent Mr. Thomas at a hearing on his post-trial *pro se* Motion for a New Trial, which was based on defense counsel's ineffectiveness in, *inter alia*, failing to investigate and present crucial eyewitness testimony. *In Violations of Petitioner's 6,11 amend of the U.S. Const.*
2. When there was a *bona fide* doubt of Mr. Thomas's fitness, the trial court erred in proceeding to trial without holding a fitness hearing and without making any determination as to Mr. Thomas's fitness to stand trial. *In Viol of Petitioner's 6,14, amend, of the U.S Const.*
3. Whether the State proved Mr. Thomas guilty beyond a reasonable doubt of the murder of Khatim Shakir where, based on the evidence adduced at trial, Mr. Thomas could not have committed the murder at the time the State asserted the crime occurred. *In Violations of Petitioner's 6,17 amend of the U.S Const.*
4. Whether the State erred in arguing that Mr. Thomas lived at 707 West Waveland Avenue, where this information was obtained in impeachment and the prosecutor argued that it was substantive evidence of Mr. Thomas's motive to commit the crime. *In Violations of Petitioner's 6,14 amend of the U.S. Const*
5. Whether Mr. Thomas was denied his right to a fair trial when the trial court denied his motion *in limine* to bar any reference to aliases used by the defendant, and

where trial counsel agreed to and the court allowed the admission of Mr. Thomas's prior convictions without analyzing whether these convictions had a bearing on Mr. Thomas's truthfulness as a witness.

6. Whether 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2002), which requires the addition of 15, 20, or 25 years to natural life to the sentence for first degree murder if a firearm was possessed, discharged, or used to cause death, violates the prohibitions against double enhancement and disproportionate penalties.

7. Whether trial counsel was ineffective for failing to investigate and present evidence that one of the State's eye witnesses had told the police, just two days after the offense, that Robert Pinkston bore a resemblance of an "8" on a scale of "1 to 10" to the person who killed, Khatin Shakir. In Violations of Petitioners 6, 11 amend of the U.S. Const

8. Whether trial counsel was ineffective for failing to investigate Mr Thomas's History of Mental health problems and Hospitalizations when he was aware of them, and provide them to the court appointed psychiatrist on the court. In Violations of Petitioners 6.1st amend of the U.S. Const.

(2) Have all grounds in this petition been presented to the highest court having jurisdiction? yes

PART IV -- REPRESENTATION

Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (A) At preliminary hearing N/A
- (B) At arraignment and plea Robert Staunle - Public Defender 2650 S California
Chicago, IL 60608
- (C) At trial Robert Staunle
- (D) At sentencing Robert Staunle
- (E) On appeal Shobha L. Mahadev, Ass. App. defender 203 N LaSalle ch. ILL
60601
- (F) In any post-conviction proceeding Shobha L. Mahadev
- (G) Other (state): _____

PART V -- FUTURE SENTENCE

Do you have any future sentence to serve following the sentence imposed by this conviction?

YES () NO (☒)

Name and location of the court which imposed the sentence: _____

Date and length of sentence to be served in the future _____

WHEREFORE, petitioner prays that the court grant petitioner all relief to which he may be entitled in this proceeding.

Signed on: 11-5-07
(Date)

Signature of attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct.

Tony Thomas
(Signature of petitioner)

B-35507
(I.D. Number)

P.O. Box 112, Joliet ILL 60434
(Address)